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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Northwest Ecosystem Alliance

**File:** B-271636

**Date:** July 12, 1996

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Gary K. Kahn, Esq., Reeves, Kahn & Eder, for the protester.

Michael J. Gippert, Esq., Department of Agriculture, for the agency.

Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Forest Service properly found high bidder for salvage timber sale to be nonresponsible after the bidder stated that it intended to leave the area unlogged instead of meeting the contract obligation to cut and log the timber.

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## DECISION

Northwest Ecosystem Alliance (NWEA) protests the determination by the Forest Service, Department of Agriculture that NWEA is not a responsible contractor for purposes of award of a contract for the Thunder Salvage Timber Sale.

We deny the protest.

NWEA was the high bidder in the sale auction. Following the auction, however, NWEA advised the Forest Service that it had no intention of performing logging operations in the sale area, stating its desire that the area remain unlogged for a normal timber rotation period. The Forest Service then found NWEA nonresponsible and thus ineligible for the award on the grounds that NWEA had neither the ability nor the intent to perform the logging operations as required by the contemplated contract. In this respect, Forest Service regulations preclude a contracting officer from awarding a timber sale contract without first determining the purchaser responsible, considering factors such as the purchaser's ability to perform the contract within the contract term, the purchaser's performance record on timber sale contracts, and the purchaser's present possession of, or ability to obtain, equipment and supplies suitable for logging. 36 C.F.R. §§ 223.100, 223.101.

NWEA points out that by the sale's terms the contract was to be awarded based on the bid "most advantageous to the United States." NWEA argues that it submitted the "most advantageous" bid in that the bid was the highest one received, award to NWEA would entail no contract administration or environmental management (e.g.,

reforestation) costs, and award to NWEA would yield substantial ecological and resource benefits.

We will not consider NWEA's protest to the extent it involves the Forest Service's decision to conduct the sale in the first instance, that is, NWEA's concerns about the sale's environmental and ecological impacts and NWEA's evident disagreement with the Forest Service regarding the need for and utility of the sale. Section 2001 of the fiscal year 1995 Rescissions Act, Pub. L. No. 104-19, 16 U.S.C.A. § 1611 note (West Supp. 1996), addresses the Department of Agriculture's emergency salvage timber sale program. According to section 2001(a)(3), an important reason for a salvage timber sale is the removal of diseased or insect-infested trees, dead, damaged or down trees, and trees affected by fire or imminently susceptible to fire or insect attack, as well as "associated trees or trees lacking the characteristics of a healthy and viable ecosystem." Section 2001(e) provides that decisions by the Secretary of Agriculture in connection with salvage timber sales are not subject to administrative review, and section 2001(f) limits the judicial review of such decisions.<sup>1 2</sup>

Regarding whether the Forest Service properly found NWEA nonresponsible, the Thunder Salvage Timber Sale was to be awarded "to that responsible bidder whose bid, conforming to the invitation for bids, is most advantageous to the United States on the basis of total value at rates bid for the estimated quantities." NWEA's bid on its face conformed in that it evidenced no exception to the sale requirements, and its price in fact was the "most advantageous" on the advertised basis.<sup>3</sup> (The other alleged advantages to the bid focus on factors other than the basis for the competition and, as noted above, are not appropriate for our review.) Nevertheless, the Sample Contract to which prospective bidders were referred for the material terms of the sale provided: "Forest Service agrees to sell and permit Purchase to cut and remove and Purchaser agrees to purchase, cut and remove Included Timber." Thus, the sale clearly contemplated cutting and removing timber, so that

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<sup>1</sup>For example, any challenge to a sale must be filed in the U.S. district court for the district in which the affected federal lands are located, and within 15 days after the date of the initial sale advertisement.

<sup>2</sup>We also point out that our Bid Protest Regulations require that a protest of a solicitation's provisions be filed before bids are opened. 4 C.F.R. § 21.2(a)(1) (1996).

<sup>3</sup>After rejecting NWEA as nonresponsible, the Forest Service awarded the contract to the next high bidder but at NWEA's high bid price, pursuant to 36 C.F.R. § 223.102. We note in this regard that section 2001(c)(6) of the Rescissions Act permits salvage timber sales even where costs are likely to exceed revenues.

acceptance of NWEA's bid would obligate NWEA, as a contractual matter, to pursue that effort.

Responsibility reviews are to ensure that the government does not enter into contracts with firms that despite their apparently successful competitive offers will not be able to meet contract obligations--agencies are precluded from contracting with nonresponsible concerns. See 36 C.F.R. § 223.100; Federal Acquisition Regulation § 9.103 (regarding purchases). While responsibility generally is judged in terms of factors such as financial and other resources, experience, and integrity, see 36 C.F.R. § 223.101, it also encompasses a company's intent to perform the requirement on which the competition was based. See, e.g., Glenn T. Anderson, Inc., B-213640, B-213641, Dec. 14, 1983, 83-2 CPD ¶ 689; Anderson Columbia Co., Inc., B-249475.3, Oct. 27, 1992, 92-2 CPD ¶ 288; Jersey Maid Distributors, Inc., B-217307, March 13, 1985, 85-1 CPD ¶ 307. The government thus will not enter into a contract with a party that has stated its intent not to perform a requirement as advertised and to which the party therefore would be bound if its offer were accepted.

Our Office will not question a determination of nonresponsibility absent a showing of bad faith on the part of the contracting agency or that the determination lacked a reasonable basis. See North Am. Constr. Corp., B-270085, Feb. 6, 1996, 96-1 CPD ¶ 44. Since intent to meet contract obligations properly is a responsibility matter, and since NWEA expressly stated its intent not to fulfill its part of the contract agreement, we see no legal basis to object to the Forest Service's decision that NWEA is not responsible for purposes of the sale award.

The protest is denied.

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